

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

MICHAEL SEAN SEAMON, )  
 )  
Plaintiff, ) 03:10-cv-06421-HU  
 )  
vs. ) **FINDINGS AND**  
 ) **RECOMMENDATION**  
MICHAEL J. ASTRUE, )  
Commissioner of Social Security, )  
 )  
Defendant. )

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1 - FINDINGS AND RECOMMENDATIONS

1 HUBEL, J.,

2 Before the court is plaintiff Michael Sean Seamon's  
 3 ("Plaintiff") stipulated motion for attorney's fees under the Equal  
 4 Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Plaintiff's  
 5 counsel seeks approval of an EAJA award in the amount of \$3,475.86.  
 6 For the reasons set forth below, Plaintiff's motion (Docket No. 18)  
 7 for EAJA fees should be **GRANTED**.

#### 8 ***I. PROCEDURAL BACKGROUND***

9 Plaintiff filed this action on December 20, 2010, seeking  
 10 judicial review of the Commissioner of Social Security's  
 11 ("Commissioner") denial of his applications for disability  
 12 insurance benefits ("DIB") and supplemental security income ("SSI")  
 13 benefits under Titles II and XVI of the Social Security Act. In  
 14 his opening brief, filed on December 7, 2011, Plaintiff asserted  
 15 four grounds upon which the Administrative Law Judge's ("ALJ")  
 16 decision should be reversed: (1) the ALJ erred by failing to  
 17 develop the record regarding Plaintiff's cognitive and mental  
 18 limitations; (2) the ALJ erred by failing to find that Plaintiff's  
 19 cerebral palsy condition met or equaled the criteria of Listing  
 20 11.07; (3) the ALJ failed to give clear and convincing reasons for  
 21 rejecting Plaintiff's testimony; and (4) the Commissioner did not  
 22 meet his burden of proving that Plaintiff retains the ability to  
 23 perform "other work" in the national economy.

24 On March 1, 2012, the parties, acting through their respective  
 25 counsel, stipulated that this case be reversed and remanded to the  
 26 Commissioner for further administrative proceedings before an ALJ,  
 27 a de novo hearing, and new decision. On remand, the ALJ was  
 28 directed to (1) retrieve, include as an exhibit, and evaluate the

1 missing 1995 report by Dr. David Starr, wherein Dr. Starr found  
2 Plaintiff suffered from a learning disability; and (2) order a new  
3 neuropsychological consultative examination. Based on the  
4 stipulation of the parties, on March 5, 2012, Judge Hernandez  
5 entered an Order and Judgment of Remand pursuant to sentence four  
6 of 42 U.S.C. § 405(g).

## 7 **II. DISCUSSION**

8 EAJA requires an award of attorneys' fees to a prevailing  
9 plaintiff in a Social Security appeal, "unless the court finds that  
10 the position of the United States was substantially justified or  
11 that special circumstances make an award unjust." 28 U.S.C. §  
12 2412(d). In this case, it is apparent Plaintiff was the prevailing  
13 party and the Commissioner's position was not substantially  
14 justified. See *Olive v. Comm'r Soc. Sec.*, 534 F. Supp. 2d 756, 758  
15 (N.D. Ohio 2008) (recognizing that a social security claimant who  
16 obtains a remand order pursuant to sentence four of § 405(g) is a  
17 "prevailing party" for purposes of EAJA); *Ward v. Astrue*, 2012 WL  
18 1820579, at \*1 (M.D. Fla. May 18, 2012) (noting that the  
19 Commissioner in effect concedes his position was not "substantially  
20 justified" by stipulating to remand and not opposing a request for  
21 EAJA fees). Nevertheless, even absent specific objections by the  
22 opposing party, the court has an independent duty to scrutinize a  
23 fee request to determine its reasonableness. *Gates v. Deukmejian*,  
24 987 F.2d 1392, 1401 (9th Cir. 1993).

25 According to the Supreme Court, "[t]he most useful starting  
26 point for determining the amount of a reasonable fee is the number  
27 of hours reasonably expended on the litigation multiplied by a  
28 reasonable hourly rate," *Hensley v. Eckerhart*, 461 U.S. 424, 433

1 (1983), which results in a "lodestar." *Webb v. Ada County, Idaho*,  
2 195 F.3d 524, 527 (9th Cir. 1999) (citation omitted). The district  
3 court enjoys "considerable discretion" in determining what  
4 attorneys' fee is reasonable and "may downwardly adjust either the  
5 components of the lodestar or the lodestar itself to reflect the  
6 results obtained." *Id.*

7 The time records submitted with Plaintiff's motion indicate  
8 that attorney Kathryn Tassinari expended 19.25 hours on this case  
9 (3.10 hours in 2010; 6.80 hours in 2011; and 9.35 hours in 2012).  
10 The majority of Tassinari's time was spent reviewing the 285-page  
11 transcript and drafting, editing and finalizing her 16-page opening  
12 brief. This court recognizes a range of 20-40 hours to be "a  
13 reasonable amount of time to spend on a social security disability  
14 case that does not present particular difficulty." *Harden v.*  
15 *Comm'r Soc. Sec. Admin.*, 497 F. Supp. 2d 1214, 1215-16 (D. Or.  
16 2007). Kathryn Tassinari's claimed hours are on the low end of the  
17 spectrum -- something this Judge is not accustomed to seeing from  
18 social security practitioners in this district.

19 In considering the applicable hourly rate, the statute itself  
20 sets a \$125 per hour ceiling "unless the court determines that an  
21 increase in the cost of living . . . justifies a higher fee." 28  
22 U.S.C. § 2412(d)(2)(A). To adjust for the cost of living, the  
23 Ninth Circuit applies the national Consumer Price Index for All  
24 Urban Consumers (the "CPI-U"), not seasonally adjusted, and  
25 applying the "all items" index. *Jones v. Espy*, 10 F.3d 690, 692-93  
26 (9th Cir. 1993). The cost-of-living increase is "calculated by  
27 multiplying the \$125 statutory maximum hourly rate by the . . .  
28 CPI-U for the years in which the attorney's work was performed and

dividing by the CPI-U figure for March 1996 (155.7), the effective date of the statutory maximum hourly rate." *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir.2009) (citing *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir.2005)).

The EAJA-adjusted hourly rate for 2010 is \$175.06;<sup>1</sup> for 2011 is 180.59;<sup>2</sup> and for 2012 is 184.50.<sup>3</sup> Multiplying counsel's requested hours for the respective years results in attorney fees of \$542.69 for 2010 (3.10 hour x \$175.06); \$1,228.01 for 2011 (6.80 hours x \$180.59); and \$1,725.08 for 2012 (9.35 hours x \$184.50); for a total of \$3,495.78 for all three years. This amount is slightly more than the \$3,475.86 requested in Tassinari's stipulated motion for EAJA fees. In any event, after reviewing the EAJA request, it is clear that Tassinari seeks a reasonable fee for efficient handling of this case.

### III. CONCLUSION

Based on the foregoing reasons, Plaintiff's stipulated motion (Docket No. 18) for EAJA fees should be **GRANTED**. Plaintiff's counsel should be awarded \$3,475.86 in EAJA fees.

### IV. SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due **October 8, 2012**. If no objections are filed, then the Findings and Recommendation will go under advisement on that date. If objections are filed, then a response is due **October 25, 2012**. When the response is due or

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<sup>1</sup> \$125 x (2010 annual index of 218.056/155.7)= \$175.06.

<sup>2</sup> \$125 x (2011 annual index of 224.943/155.7)= \$180.59.

<sup>3</sup> \$125 x (2012 annual index of 229.815/155.7)= \$184.50.

1 filed, whichever date is earlier, the Findings and Recommendation  
2 will go under advisement.

3 Dated this 18th day of September, 2012.

4 /s/ Dennis J. Hubel

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6 DENNIS J. HUBEL  
7 United States Magistrate Judge  
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